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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,663

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David M. Bapst

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12/08/2006

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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,663	Applicant(s) BAPST ET AL.	
	Examiner Urszula M. Cegielnik	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-12,14-18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-12,14-18 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The finality of the Office action dated 02 October 2006 has been withdrawn, and prosecution has been reopened.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 10-12, 14-17, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood et al. (US Patent No. 6,705,950).

Wood et al. disclose an oscillating product that includes a portion (20) for receiving a person and further includes an entertainment device (54,36,38), the entertainment device (54,36,38) comprising a mobile arm (32) rotatably coupled to the entertainment device (54,36,38); a motion conversion device (70) coupled to the entertainment device (54,36,38) and the mobile arm (32) to convert an oscillatory motion of the entertainment device into a rotational motion of the mobile arm (32); a weighted housing (60) rotates in response to the oscillatory motion of the entertainment device (54,36,38) such that rotational motion of the housing effects rotational motion of the mobile arm (32); and a mounting member (56) to secure the entertainment device to the oscillating product (10), wherein upon securing the mounting member (56) to the oscillating product, the oscillating product (10) conveys oscillatory motion to the entertainment device (54,36,38); the mounting member (56) includes at least one

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fastener (74) to connect the entertainment device (54,36,38) to the oscillating product (10); the mobile arm includes at least one object secured along the mobile arm; the mobile arm includes a first object secured proximate a first terminal end of the mobile arm and a second object secured proximate a second terminal end of the mobile arm (col. 5, lines 54-62); the first object is heavier than the second object (col. 5, lines 41-44 and 62-65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

~~4, 6, 9, 18, 20-22~~
 Claims ~~4-9, and 18-22~~ are rejected under 35 U.S.C. 103(a) as being
~~4, 6-9, 18, 20-22~~ *re*
 unpatentable over Wood et al. (US Patent No. 6,705,950) in view of Yano (US Patent No. 5,820,060).

Wood et al. disclose the claimed invention except for a gear assembly effecting rotational motion of the mobile arm in a single direction with respect to the mounting member in response to oscillatory motion of the entertainment device; the motion conversion device further includes a weighted gear housing that rotates in response to oscillatory motion of the entertainment device such that rotational motion of the gear housing control operation of the gear assembly to effect rotational motion of the mobile arm; the driving pawl and the second pawl move in opposing directions with respect to each other during oscillatory motion of the entertainment device.

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Yano teaches a weighted gear housing (10,140); a gear assembly having a ratchet gear (52); a driving pawl (36); a second pawl (38); the driving pawl (36) and the second pawl (38) move in opposing directions (col. 5, lines 19-22); a clutch (116).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed gear assembly as taught by Yano, since such a modification would permit rotational motion of an element.

Furthermore, it would have been obvious to provide a clutch as taught by Yano, since such a modification would permit engagement or disengagement of gear components.

Response to Arguments

Applicant's arguments filed 02 October 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no motivation to combine Wood et al. with Yano to show the claimed gear mechanism, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated in the previous Office action dated 02 October 2006 and repeated herein, Yano is used to show an automated gear arrangement that uses a weighted gear housing, pawls, and a ratchet gear to effect motion of mechanical parts.

With regard to Wood not disclosing a weighted *housing*, the Examiner submits that this limitation is read broadly, the housing of reference part 60 (socket ball), which may be hollow, or solid encloses or envelopes either space or air if the socket ball is hollow, or matter if it is solid.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EUGENE KIM
SUPERVISORY PATENT EXAMINER